

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: AMENDMENT TO COURT OF CHANCERY RULES, SECTION XIV, RULE 144

This 15<sup>th</sup> day of December 2014, IT IS HEREBY ORDERED that Court of Chancery Rules, Section XIV, Rule 144 shall be amended effective January 1<sup>st</sup>, 2015.

**Rule 144 shall be amended as follows:**

Rule 144. ~~Report; action~~ Master's Reports.

(a) Final Reports. A Master shall issue a decision in the form of a final report. A final report may be provided orally on the record or in writing. The final report shall be filed with the Register in Chancery and include factual and legal determinations sufficient to support the Master's decision and to permit *de novo* review by the Court.

~~(a) As soon as the Master is ready to file a report, the Master may, before filing it, submit a draft thereof to each party for its inspection. Any party may take exception to the draft report by filing a notice of exception with the Office of the Register Master's reports. — As soon as the Master is ready to file a report, the Master may, before filing it, submit a draft thereof to each party for its inspection. Any party may take exception to the draft report by filing a notice of exception with the Office of the Register in Chancery or Register of Wills, as appropriate, within one week of the date of the draft report. Any party failing to file a notice of exception within one week of the date of the draft report shall be deemed to have waived the right to review of the report, except insofar as the report is modified in response to the exceptions of other parties. Upon the filing of a notice of exception, the Master shall set a schedule for submission of memoranda on the exceptions. Such exceptions shall be heard first by the Master who shall be at liberty to amend the draft report. The draft report may be provided to the parties in writing or may be entered into the record from the bench. In the latter case, any party taking exception to the draft report shall order a transcript of the report from the record, which shall serve as the text of the report for purposes of review by the Master and the Court. The report shall contain findings of fact and conclusions of law sufficient to support the decision of the Master and to allow meaningful review by the Court. If the Master files a draft report, the only exceptions which may be filed to the final report are those which were filed to the draft report and disallowed, plus exceptions to any changes from the draft report made in the final report. Should the Master find that the interests of justice are best served thereby, he may omit a draft report, and designate his initial report as his final report. In that case, the Master shall notify the parties that his initial report, whether oral or written is his final report, and the procedure for taking exception to that final report shall be as stated in this Rule. The Master's final report shall be filed in the Office of the Register in Chancery or Register of Wills, as appropriate, who shall give notice thereof to~~

~~the parties interested. Any party wishing to take exception to the final report shall file a notice of exception with the Register within one week of receiving notice that the final report has been filed. Any party not filing a notice of exception to the final report within one week shall be deemed to have waived the right to review of the final report. After filing a notice of exception, a party shall file its opening brief in support of its exceptions with the appropriate Register within twenty days, in conformity with Rule 171. A party who opposes the exceptions shall file an answer to the exceptions within twenty days of the exceptant's opening brief and the exceptant shall file a reply within fifteen days of the answering brief. Answers and replies shall be filed as briefs in conformity with Rule 171. In all instances in which the Master's report is based upon testimony taken on the record before the Master, proceedings on any exception to the final report shall be on that record, unless for good cause shown the Court elects to take additional testimony. If no exceptions are filed to the final report, the Court may in its discretion thereafter confirm such report as described in Part 2 of this Rule or set the matter down for further proceedings. If exceptions to the final report are filed, the Court may make such order as it deems appropriate. In either instance, upon the confirmation of a final report, the Court shall make such order thereon as it deems appropriate.~~

~~(2) Reports without exception by any party. — In any case where no party takes exception, within the time periods allowed above, to the draft report or to the final report, the report shall be deemed final, and~~(b) Draft Reports. Before issuing a final report, a Master may provide the parties with the report in draft form. A draft report may be provided orally on the record or in writing. The Master may modify the draft report in response to exceptions by the parties or as the Master deems appropriate. Any party failing to file a notice of exception within the period prescribed by this rule shall be deemed to have waived the right to review the report, except insofar as the report is modified in response to the exceptions of other parties.

(c) Exceptions. Any party may take exception to a final report or a draft report. Exceptions to a draft report shall be heard by the Master and shall be addressed in the final report issued by the Master. Exceptions to a final report shall be heard by the Court. If the Master files a draft report, then the only exceptions that a party may take to a final report are (i) exceptions to the draft report that were timely filed and disallowed and (ii) exceptions to any differences between the draft report and the final report. If a notice of exception to a final report is not timely filed, then the parties shall be deemed to have stipulated to the approval and entry of the report as a final~~an~~ order of this~~the~~ Court.

(d) Schedule For Taking and Briefing Exceptions. Unless otherwise agreed by the parties or directed by the Master or the Court, the following schedule shall govern the taking and briefing of exceptions.

(1) In actions that are not summary in nature or in which the Court has not ordered expedited proceedings, any party taking exception shall file a notice of exceptions within eleven days of the date of the report. The party taking exception shall file its opening

brief in support of its exceptions within twenty days after filing the notice of exception. Any party opposing the exceptions may file an answering brief within twenty days after the filing of the exceptant's opening brief. The exceptant may file a reply brief within fifteen days of the answering brief. If the party taking exception fails to file a timely opening brief, then the notice of exception shall be deemed withdrawn.

(2) In actions that are summary in nature or in which the Court has ordered expedited proceedings, any party taking exception shall file a notice of exceptions within three days of the date of the report. ~~The Master shall submit the report to the~~ presiding Chancellor ~~or, Vice Chancellor for review and for,~~ or Master shall promptly set a schedule for briefing on the exceptions, taking into account the need for summary or expedited resolution of the action.

(e) Record For Taking Exceptions. Proceedings before the Court on any exceptions shall be on the record before the Master, unless the Court determines otherwise for good cause shown. Any party taking exception to an oral report shall obtain a transcript of the report, which shall be filed as an exhibit to the party's opening brief. If a party wishes to rely on a transcribed portion of the record when taking exception to or opposing an exception to a report, then the party that wishes to rely on the transcribed portion shall obtain the appropriate portion of the transcript and file it as an exhibit to the opening or answering brief, as applicable. The Court or the Master may order additional portions of the transcript and tax the parties as appropriate.

(f) Stay of Exceptions. For good cause shown, the Master may stay the time for taking exceptions to a report until a later phase of the proceeding.

(g) Shortened periods for certain orders. An order of the type identified in this section, when issued by the Master, shall constitute a final report for purposes of this Rule, except that any notice of exception to the report shall be filed within three days of the entry of the ~~report as an order~~. If no exceptions are taken, the ~~order of the Court, as appropriate.~~ The Court shall be considered submitted to the Chancellor, who will review the ~~legal and factual findings in the final report de novo.~~ *order de novo* and enter it as an order of the Court to the extent appropriate. If the Court does not indicate otherwise within ~~one week~~ three days after the expiration of the ~~date upon which the~~ period for taking exceptions ~~expired~~, the ~~Report~~ *order* shall be deemed adopted in its entirety as an ~~Order~~ *order* of the Court ~~by stipulation of the parties~~, and shall have the same effect as though ~~ordered~~ *issued* by a Chancellor or Vice Chancellor, as of the date it was issued by the Master, *nunc pro tunc*.

(b) Transcript.—

(1) In all cases in which a party files exceptions to the Master's draft report, the party shall, with the notice of exception, serve and file a designation and request for the preparation of a transcript of those portions of the proceedings it deems necessary for inclusion in the record. A copy of the designation. The types of orders falling within this section are scheduling orders, any order issued in an uncontested civil miscellaneous

action, preliminary orders setting a matter for a hearing and directing that notice shall be provided, and request shall also be delivered to the court reporter. Any other party shall, within seven days thereafter, serve and file a designation and request a transcript of any additional portions of the proceedings that it deems necessary. Any party who fails to request a transcript under this subsection as to any portion of the proceedings waives any right to rely upon that portion of the proceedings in support of that party's arguments favoring or opposing an exception to the report. A transcript of the portions of the proceedings relied upon by the parties in support of their arguments favoring or opposing an exception to the draft or final report shall be submitted to the Master or the Court, as the case may be, in appendices to the parties' briefsreturns of sale.

~~(2) In any case where the Master determines, in his or her discretion, that a transcript of all or part of the proceedings is necessary in order to prepare the draft or final report, the Master shall require the parties to order such transcript. The Master may, at any stage of the proceedings, require the parties to file briefs citing to the transcript, and the parties' appendices shall include the portions of the transcript upon which the parties rely.~~

(e) Voluntary (h) Agreement for Submission to Finality of Master's Report. -- Final Decision by Master. Subject to the approval ~~and discretion~~ of the Court, the parties ~~to any case or proceeding~~ may voluntarily agree to submit ~~that any~~ case or proceeding or any claim, ~~or issue or matter arising in that~~ case or proceeding to a Master for a final decision ~~or resolution~~ that shall not be subject to ~~any~~ further judicial review ~~or appeal~~. Any such agreement must be embodied in a stipulation filed with the Register in Chancery (i) specifying the case, proceeding, claim, or ~~matter~~issue to be ~~so~~ submitted to ~~at the~~ Master, ~~and the claims or issues to be resolved by a Master. The stipulation shall also expressly waive any~~ for final decision, (ii) waiving the right of any party ~~to the case or proceeding~~ to seek further judicial review of the Master's decision ~~of a Master~~, and ~~contain an express representation (iii) reciting~~ that each party has consulted with ~~his or her~~ counsel and ~~has expressly~~ agreed to the submission of the case, proceeding, claim, or ~~matter~~issue to ~~at the~~ Master for a final decision ~~or resolution which that~~ shall not be reviewable. The stipulation shall be executed by counsel for all parties ~~to the case or proceeding and~~ approved and ordered by the Court. Matters governed by the ~~Court, and filed~~ stipulation shall proceed in accordance with ~~the Register in Chancery or the Register of Wills, as appropriate. In cases, proceedings or matters so submitted to a Master, Rules 136 through 147 will be applicable,~~ except that no exceptions shall be taken to the final report, which shall ~~not be permitted. After have~~ the ~~issuance of the Master's~~ same effect as a final report, order of the Court ~~shall enter a judgment or order implementing that final report, which and~~ shall not be subject to ~~any~~ further judicial review or appeal.